

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6703

BILL NUMBER: SB 92

NOTE PREPARED: Feb 20, 2009

BILL AMENDED: Feb 19, 2009

SUBJECT: Sex Offenders and the Internet.

FIRST AUTHOR: Sen. Young R Michael

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. Searches of Personal Computers of Certain Sex Offenders* -- It requires a sex offender who has been convicted of child solicitation, child seduction, or child exploitation (including possession of child pornography), as a condition of parole, a condition of probation, or as part of the sex offender's sentence, to permit: (1) the search of the person's personal computer at any time; and (2) the installation on the person's personal computer or device with Internet capability, at the person's expense, of one or more hardware or software systems to monitor Internet usage. It provides that the search of the computer must be conducted in a manner that interferes as little as practicable with the legitimate use of the computer, while still allowing a reliable determination of whether the person has committed a crime or violated a condition of probation or parole. It provides that a person who knowingly or intentionally refuses to permit a search of the person's computer or the installation of a monitoring device on the person's computer imposed as a part of the person's sentence may be found to be in indirect contempt of court.
- B. Procedure to Remove Designation as a Sexually Violent Predator* -- It specifies the court in which a petition to remove the designation as a sexually violent predator or an offender against children must be filed.
- C. Burden of Proof for Reclassifying* -- It provides that the petitioner has the burden of proving that the designation should be removed.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *Searches of Personal Computers of Certain Sex Offenders* – Under current law, any sex offender is subject to searches of their personal computers. As proposed, this bill would limit the number of sex offenders who are subject to these searches to persons convicted of child solicitation, child seduction, or child exploitation. Violation of a condition of probation or parole could result in an offender serving a period of incarceration, or it could extend the period the offender is under community supervision. If the court orders longer sentences for probation or parole, courts may need more staff to supervise more offenders. Any effects of this bill would be at the court's or parole board's discretion.

Explanation of State Revenues: *Indirect Contempt of Court:* The penalty for indirect contempt of court is a fine or a term of incarceration, or both. Fines collected for indirect contempt of court would be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) *Reduction of Staff Burdens on Probation Officers and Local Law Enforcement Agencies* – Limiting the number of sex offenders to those convicted of child solicitation, seduction, or exploitation will reduce the burden on local law enforcement officers and probation officers. Both local law enforcement agencies and probation officers would likely conduct searches of the personal computers of sex offenders depending on whether the sex offender is on probation or required to register as a sex offender.

Indirect Contempt of Court: If a person is sentenced to a term of incarceration for indirect contempt of court, costs could increase. The average daily cost of incarceration in a county jail is about \$44 a day.

Procedure to Remove Designation as a Sexually Violent Predator – Some court petitions could shift from a court in one county to a court in another county depending on where a person was sentenced and where the person lives. The person filing this petition would pay a civil filing fee. This would remove any confusion about the court in which a person would file a case for reclassification.

Burden of Proof for Reclassifying – Current law is silent about the degree of evidence that is needed to determine whether a person should be reclassified from a sexually violent predator to a sex offender. Consequently, courts could base this decision on a preponderance of evidence. Two higher levels of evidence are used in some instances: "clear and convincing" and "beyond a reasonable doubt". Increasing the burden of proof from a preponderance of evidence to clear and convincing evidence could increase the amount of evidence that the court would need to determine whether the petitioner is no longer a sexually violent offender. It could also reduce the number of sexually violent predators who might be reclassified as sex offenders.

(Revised) **Background Information** – Sex offenders include offenders who have been convicted of committing rape; criminal deviate conduct; child molesting; child exploitation; vicarious sexual gratification; child solicitation; child seduction; sexual misconduct with a minor as a Class A, B, or C felony (with certain exceptions); incest; sexual battery; kidnaping if the victim is less than 18 years old; some criminal confinement of a person under 18 years old; possession of child pornography; promoting prostitution; human trafficking and promoting human trafficking if the victim is less than 18 years old; sexual trafficking of a minor; murder; voluntary manslaughter; an attempt to commit a listed offense; any substantially equivalent crime under the laws of another jurisdiction; and certain juvenile offenses. IC 11-8-8-5.1.

Effective July 1, 2008, persons who are determined to be sex offenders are required to sign a consent form authorizing the search of the sex or violent offender's personal computer or device with Internet capability, at any time; and installation on the sex or violent offender's personal computer or device with Internet capability,

at the sex or violent offender's expense, of hardware or software to monitor the sex or violent offender's Internet usage.

A sexually violent predator is by law defined as a sex offender who "suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense" (IC 35-38-1-7.5). Persons are automatically classified as sexually violent predators if they are convicted of rape, criminal deviate conduct, child molesting as a Class A or B felony, or vicarious sexual gratification as a Class A, B, or C felony. They can also be classified as a sexually violent predator by a court hearing.

"Offenders against children" are by default any sexually violent predators or any sex offenders convicted of a crime of child molesting, exploitation, solicitation, or seduction.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts with criminal jurisdiction and probation departments

Information Sources: Indiana Sheriff's Association.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.